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FREEDOM OF INFORMATION ACT REQUEST

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Sent VIA FOIAonline

**Re: Freedom of Information Act Request Concerning National Use and Regulation
of Second-Generation Anticoagulant Rodenticides.**

Dear FOIA Officer,

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, Earthrise Law Center, on behalf of the Charles River Watershed Association, requests copies of public records in the custody of the U.S. Environmental Protection Agency ("EPA"), as identified below. This FOIA request seeks records from the last three years (Jan. 1, 2020 to the date of search for these records).

The Charles River Watershed Association ("CRWA") is a regional non-profit working within the Charles River Watershed in Massachusetts. The Charles River flows through twenty-three cities and towns in the state before ending its journey eighty miles later in Boston Harbor. CRWA was founded in 1965 by local citizens in response to water quality degradation in the river, making CRWA one of the oldest watershed associations in the country. The watershed spans thirty-five municipalities in Massachusetts and is made up of approximately 8,000 active supporters and volunteers who care deeply about the health of this magnificent river. CRWA works to restore, protect, and improve the Charles River Watershed through several initiatives, such as climate resiliency projects, educational advocacy, wetlands preservation, invasive species removal, addressing stormwater pollution, and water quality monitoring. CRWA's supporters live on or near the Charles River, frequently recreate throughout the greater Charles River Watershed, and are directly impacted by the effects of second-generation anticoagulant rodenticides on local wildlife.

Factual Background

CRWA requests the information identified below because it is concerned about adverse impacts to local ecosystems and wildlife as a result of the use of second-generation anticoagulant rodenticides¹ (“SGARs”) to control rodent populations. Three bald eagles (a state-listed species of special concern under the Massachusetts Endangered Species Act) have been fatally poisoned over the last two years in Massachusetts as a result of consuming prey that had been contaminated with SGARs.² Two of these bald eagle deaths occurred in the Charles River Watershed, including the death of a beloved local eagle known as “MK.”³ MK and her mate, KZ, were the first bald eagle pair to nest in the region since local bald eagle populations steeply declined in the 1960s due to use of the chemical DDT. MK’s death sparked a vigil and march attended by approximately 300 local Arlington, Massachusetts residents. Various levels of SGARs have also been detected in other non-target wildlife species, including, *inter alia*, California condors,⁴ White-Tailed eagles,⁵ foxes,⁶ owls,⁷ and mountain lions.⁸ When target species, such as rats and mice, consume SGARs, it takes several days for them to ultimately succumb to the poison. During that time, they become slow and weakened, making them more susceptible to being preyed upon by a predator, such as bald eagles. When animals consume rodents who have ingested SGARs (these animals are then known as “secondary consumers”), there is evidence that the SGARs themselves accumulate in the non-target wildlife’s tissue, because the chemicals used in SGARs have exceptionally long half-lives. Over time, accumulation of SGAR chemicals can be fatal to the secondary consumer. Given that SGARs are regulated at the federal level by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), CRWA has reason to believe that there are records in EPA’s possession related to the use, distribution, and effects of SGARs in the United States for the requested time period.

Documents Requested

Requests for records maintained by EPA are governed by EPA’s FOIA regulations. See 40 C.F.R. § 2.100 *et seq.* (2023). Pursuant to these regulations, CRWA requests any and all

¹ The four federally-registered SGARs are: brodifacoum, bromadiolone, difenacoum, and difethialone. EPA, Restrictions on Rodenticide Products: Types of Rodenticides, *available at* <https://www.epa.gov/rodenticides/restrictions-rodenticide-products#types>.

² First bald eagle death in Massachusetts from rodenticides confirmed, MassWildlife News (May 2, 2021), <https://www.mass.gov/news/first-bald-eagle-death-in-massachusetts-from-rodenticides-confirmed>.

³ See Mike Sullivan, *Bald eagle believed to have ingested rodenticide in Arlington dies*, CBS News Boston: WBZ (March 2, 2023), <https://www.cbsnews.com/boston/news/bald-eagle-poisoned-rat-dies-arlington-massachusetts-mk/>; Oscar Margain, *Death of Eagle Sparks Increased Calls to Keep Certain Rat Poisons Out of Food Chain*, NBC Boston (March 2, 2023), <https://www.nbcboston.com/news/local/death-of-eagle-sparks-increased-calls-to-keep-certain-rat-poisons-out-of-food-chain/2987123/>.

⁴ Garth Herring et al., *Collateral damage: Anticoagulant rodenticides pose threats to California condors*, 311 ENV’T L. POLLUTION 1 (2022), *available at* <https://doi.org/10.1016/j.envpol.2022.119925>.

⁵ Bartosz Sell et al., *White-Tailed Eagles’ (Haliaeetus albicilla) Exposure to Anticoagulant Rodenticides and Causes of Poisoning in Poland (2018-2020)*, 10 TOXICS 1 (2022), *available at* [10.3390/toxics10020063](https://doi.org/10.3390/toxics10020063).

⁶ Patrick Tate, *Unintended Harm: Rodenticides in New Hampshire’s Wildlife*, New Hampshire Wildlife Journal 16, 17-19 (2022).

⁷ *Id.*

⁸ John F. Benson et al., *Survival and competing mortality risks of mountain lions in a major metropolitan area*, BIOLOGICAL CONSERVATION 1, 6 (2019), *available at* <https://doi.org/10.1016/j.biocon.2019.108294>.

analyses, documents, or communications regarding the registration, use, and effects of SGARs. This request includes, but is not limited to:

1. Any and all documents related to or addressing the impacts or potential impacts of SGARs on human health and/or the environment;
2. Any and all documents related to the impacts or potential impacts of SGARs on non-target organisms, including federally listed species under the Endangered Species Act;
3. Any and all documents and communications between EPA and any other state or federal agency regarding SGARs;
4. Any and all documents related to or addressing the safety of SGARs for use by consumers and/or for commercial purposes;
5. Any and all documents related to or addressing SGAR movement or runoff within or adjacent to bodies of water;
6. Any and all documents related to SGAR use, distribution, registration, and/or disposal in the state of Massachusetts;
7. Any and all documents related to analyses of the effectiveness of SGARs, including in comparison to other methods of rodent control.

This request applies to all such records in whatever form, including (without limit) correspondence, memoranda, notes, telephone conversation notes, e-mail messages and electronic files, the release of which is not expressly prohibited by law. It also covers any nonidentical duplicates of records that, by reason of notation, attachment, or other alteration or supplement, include any information not contained in the original record. This request is not meant to be exclusive of other records that, though not specifically requested, would have a reasonable relationship to the subject matter of this request. To save resources and mailing expense, we request electronic copies of these documents if available.

Finally, CRWA respectfully requests that EPA include in its response an explanation of which documents, if any, may be privileged or exempt from this FOIA request. If EPA claims that the records should not be disclosed, please justify that non-disclosure by referring to the specific exemption that EPA is invoking under the FOIA. 5 U.S.C. § 552(b); *see* 40 C.F.R. § 2.104(i). CRWA reserves the right to appeal any denial.

Fee Waiver Request

CRWA also requests a waiver of all fees associated with this request. According to EPA FOIA regulations, documents shall be furnished without charge or at a reduced rate when “the Agency determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1); *see Ettlinger v. F.B.I.*, 596 F. Supp. 867, 872 (D. Mass. 1984) (“The legislative history of the FOIA clearly indicates that Congress intended that the public interest standard for fee waivers embodied in 5 U.S.C. § 552(a)(4)(A) be liberally construed.”); *see also Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 432

F.3d 945, 947 (9th Cir. 2005) (“FOIA is to be liberally construed in favor of waivers for noncommercial requesters.”).

I. Disclosure of This Information Is in the Public Interest Because It Will Contribute Significantly to Public Understanding of the Operations and Activities of the Government.

EPA FOIA regulations outline four factors to determine whether a fee waiver is in the public interest. The agency must consider:

- whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Federal government;
- the informative value of the information to be disclosed to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of EPA;
- whether disclosure will inform, or have the potential to inform, the greater public rather than simply the individual requester or small segment of interested persons, considering the requester’s expertise and ability to inform the public; and
- the significance of the contribution to public understanding, including the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure.

40 C.F.R. § 2.107(l)(2)(i)-(iv).

Here, CRWA’s request for disclosure of the above information is in the public interest because it will significantly contribute to the public’s understanding of EPA’s operations and activities related to SGAR regulation under FIFRA. Indeed, as shown below, CRWA’s request meets all of the regulatory factors, and therefore this fee waiver request should be granted.

A. The Subject Matter of the Request Involves Issues That Will Significantly Contribute to the Public Understanding of the Operations or Activities of EPA.

First, the subject matter of CRWA’s request directly concerns the operations and activities of a federal government agency—EPA—related to regulation of rodenticides under FIFRA. 40 C.F.R. § 2.107(l)(2)(i). EPA is an independent federal agency. The relevant activities are EPA’s registering of SGARs and related environmental and public health analysis, as well as EPA’s continuing obligation to periodically review rodenticides for registration eligibility under FIFRA. CRWA merely seeks all of the documents surrounding EPA’s evaluation, if any, of the use of SGARs to eliminate and deter rodent pests in order to fully understand the scope of EPA’s analysis. Therefore, the subject of the request involves issues that will significantly contribute to public understanding of the operations or activities of EPA.

B. The Informative Value of the Information to Be Disclosed Is High, and Disclosure Will Be Meaningful.

Second, the informative value of the information to be disclosed is high, and disclosure will be meaningful because it will provide CRWA and interested members of the public with the full picture of EPA's ongoing evaluation and analysis of SGARs, which directly affects the public's relationship with local wildlife. 40 C.F.R. § 2.107(l)(2)(ii). The information requested is not fully available in the public domain because CRWA requests all communications with other state and federal agencies and EPA's internal discussions. Finally, the requested information is particularly meaningful because it will provide insight into EPA's evaluation and monitoring of all SGARs registered as rodenticides under FIFRA. EPA is the singular federal agency charged with promulgating laws and regulations related to rodenticides under FIFRA, including the registration and licensing of rodenticides for both commercial and personal use. Therefore, EPA has significant expertise and technical knowledge about the effects of rodenticides on human health and the environment, as well as knowledge on how the risks of rodenticides can be mitigated. The information that EPA has generated or obtained about the risks and uses of rodenticides is of high informative value and its disclosure will be meaningful in that it will assist the public in understanding the risks related to the use of SGARs.

C. Disclosure of This Information Will Inform the Public Rather Than Simply CRWA or a Small Segment of Interested Persons.

Third, disclosure of this information will inform the public rather than simply the CRWA or a small segment of interested persons. 40 C.F.R. § 2.107(l)(2)(iii). CRWA works across dozens of towns and cities in Massachusetts, and regularly publishes blog posts, participates in the public input process for state legislation, sends email updates, and alerts the public about issues affecting the Charles River Watershed. CRWA also publishes and sends to its supporters and others regular publications, including the monthly River Current Newsletter and Municipal Newsletters in addition to print annual appeals, Annual Reports, and Strategic Plans. CRWA's website and social media pages contain public information as well. Through these media, CRWA will reach a broad audience of interested persons. Finally, CRWA has the ability to understand and process this information through its staff who are familiar with this issue, as they live locally within the Charles River Watershed, and have written and testified about this issue in the past.⁹ As a result, disclosure of this information will inform the public rather than simply CRWA or a small segment of interested persons.

D. Disclosure Will Contribute Significantly to Public Understanding of the Operations or Activities of EPA.

Fourth, disclosure of the requested information will contribute significantly to public understanding of the operations or activities of EPA because CRWA plans to disseminate the information received in the FOIA records to its supporters and the interested public in a format that is easy for the average person to understand. 40 C.F.R. § 2.107(l)(2)(iv). Even if the requested records are publicly available, the records are not available in a form or organized in a way that the public can easily access and/or understand. CRWA plans to analyze and summarize the records through its unique perspective and expertise as an advocate for wildlife in the Charles

⁹ CRWA's Policy Advocate, Zeus Smith, testified in front of the Massachusetts' Joint Committee on Environment and Natural Resources about the harmful effects of SGARs on local wildlife on May 10, 2023.

River Watershed, and possibly use the records to support its continued advocacy on this issue. Considering all of these factors, disclosure of the requested records will significantly enhance public understanding of how SGARs are regulated by EPA and about what information EPA has about the environmental and public health risks of SGARs.

II. CRWA Has No Commercial Interest in Disclosure.

Lastly, EPA regulations governing whether to grant fee waiver requests require the agency to determine that “disclosure of the requested information...is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). This includes consideration of whether any commercial interest exists and if so, whether this interest outweighs the interest in public disclosure. *See id.* § 2.107(l)(3)(i)-(ii). CRWA is a regional non-profit with a mission to “protect, restore, and enhance the Charles River and its watershed through science, advocacy, and the law.” As such, CRWA has no commercial, trade, or profit interest in disclosure. Nor will the CRWA receive any commercial benefit or payment from the disclosure.

Further, since CRWA does not have a commercial interest in disclosure, the public interest here clearly outweighs any other interests. Even assuming, *arguendo*, that CRWA had a commercial interest, its primary interest is to inform the public of the activities of EPA regarding an issue that will directly affect the public’s interest in and use and enjoyment of the Charles River Watershed area, including the wellbeing of local wildlife. Therefore, CRWA’s primary interest in disclosure is a public interest.

Conclusion

Earthrise Law Center is representing CRWA for purposes of this FOIA request. As provided by FOIA, 5 U.S.C. § 552(a)(6), we trust that we shall receive a reply to this request within 20 business days of receipt. Thank you for your time and attention in this matter, and we look forward to hearing from you shortly. If you have any questions, feel free to contact me at Earthrise Law Center, using the contact information set forth above.

Best regards,

/s/ Kevin Cassidy
Kevin Cassidy
Earthrise Law Center

CC: Zeus Smith, Policy Advocate, Charles River Watershed Association